Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1996

JOSE ANTONIO PEREZ,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the use of double hearsay testimony of an unidentified informant as the sole basis for pretrial detention of Petitioner pursuant to 18 U.S.C. § 3142(f) violates his right to confront witnesses provided by the Sixth Amendment to the United States Constitution and the right to due process provided by the Fifth Amendment to the United States Constitution.

2. Whether the use of double hearsay testimony of an unidentified informant as the sole basis for pretrial detention, in the absence of any finding of strong reasons to maintain the anonymity of the informant, and in the absence of corroborating evidence, violates the right to due process provided by the Fifth Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

Jose Antonio Perez, Petitioner
United States of America, Respondent

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OPINIONS AND ORDERS BELOW

The decision of the District Court below (Appendix, pp. 1A-9A, infra) and the Order of the Court (Appendix, p. 10A-12A, infra) were not reported. The Court of Appeals orally affirmed the decision of the District Court. The decision of the Court of Appeals is not reported.

STATEMENT OF JURISDICTION

The judgment of the Court below was entered on January 28, 1997. Rehearing of the appellate decision was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

1. The Sixth Amendment to the United States Constitution, provides:

> **Rights of the accused.**
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

2. The Fifth Amendment to the United States Constitution, provides:

> **Criminal actions - Provisions concerning - Due Process of law and just compensation clauses.**
>
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

3. The statute under which Petitioner was detained pending trial, 18 U.S.C. § 3142. (Appendix, pp. 13A-15A, pertinent text).

STATEMENT OF THE CASE

A. Course of Proceedings

On October 9, 1996, Petitioner was indicted with other defendants for conspiring to distribute cocaine in violation of 21 U.S.C. § 846; conducting a continuing criminal enterprise in violation of 21 U.S.C. § 848; distributing cocaine in violation of 21 U.S.C. § 841(a)(1); and criminal forfeiture pursuant to 21 U.S.C. § 853. (Appendix, pp. 16A-22A). A number of Petitioner's alleged co-conspirators were also indicted for larceny and possession of firearms. (Id.) The United States moved for pretrial

detention of all defendants, based on an alleged risk of flight and dangerousness to the community and witnesses.

In October, 1996, every other defendant with whom Petitioner was indicted, including those indicted for Larceny and Possession of Firearms, were released from detention with the exception of Petitioner and David Perez.

On October 30, 1996 Magistrate Smith of the District Court issued a ruling in which he detained Petitioner, along with David Perez on the basis of dangerousness and risk of flight. (Appendix, pp. 23A-25A).

Both defendants appealed this ruling and moved for an order to compel production of the Government informant. On December 10, 1996, the Honorable Dominic J. Squatrito of the District Court held a hearing after which he released defendant David Perez pending trial but affirmed the detention of Petitioner on the basis of dangerousness. (Appendix, pp. 2A-9A). On December 19, 1996, the District Court entered the order of detention of Petitioner. (Appendix, p. 10A-12A).

On December 13, 1996, Petitioner filed a Notice of Expedited Appeal to the Second Circuit Court of Appeals. Briefs in support of Petitioner's appeal and in opposition thereto were filed by each of the parties. On January 28, 1997, the Court of Appeals issued an oral ruling at oral argument affirming the decision of the District Court.

B. Relevant Facts Concerning the Pretrial Detention Hearing.

At the pretrial detention hearings, the Government's sole evidence of Petitioner's dangerousness was a statement allegedly made by Petitioner to an informant in which he threatened the life of a police officer, Detective Shanley.\[1] (Appendix, pp. 2A-3A). However, the District Court denied Petitioner's motion to compel the Government to either produce the informant who allegedly heard this statement, or to identify him. (Appendix, pp. 4A, 9A).

The District Court permitted the Government to present the double hearsay testimony of Detective Shanley as to what the informant told him the Petitioner said. Thereafter, the District Court, relying solely upon the testimony of Detective Shanley, found that the Government had proved by clear and convincing evidence that Petitioner posed a danger that merited pretrial detention. (Appendix, pp. 2A-5A).

The District Court rejected Petitioner's claim that the use of the double hearsay testimony of Detective Shanley, who neither heard nor saw the alleged threat being made, violated his right to confront witnesses and to due process. The Court held that it was not "necessary" for Petitioner's attorney to call the informant and that:

---

[1] The Government also presented evidence that Petitioner's co-defendants possessed firearms and attempted to link this evidence to Defendant's dangerousness. However, the District Court rejected this argument. (Appendix. pp. 5A-8A).

> [t]he Court finds that not only was there a statement that may have been considered hearsay, but that hearsay is permitted because Mr. Shanley was present in the bar, it was relayed to him immediately after having been made, and the confidential informant was such that he was able to rely upon his truth and veracity because of the long-term dealings that he had with his confidential informant on several occasions.
>
> The Court gives full credit to the credibility of Mr. Shanley as to how these events transpired, what the confidential informant said to him. There was no reason to disbelieve the recollection and the testimony of Mr. Shanley concerning the direct threat or the apparent threat to Mr. Shanley transmitted through the confidential informant, which was corroborated because Mr. Shanley was right there in the bar.

(Appendix, pp. 2A-5A, 9A).

EXISTENCE OF JURISDICTION BELOW

Petitioner was detained pending trial in the District Court for the District of Connecticut pursuant to 18 U.S.C. § 3142.

REASONS FOR ALLOWANCE OF WRIT

The Court of Appeals has decided a federal question in a way that conflicts with the applicable decisions of this Court and other Circuit Courts. This case presents the tension between a defendant's statutory and constitutional right to due process and to confront witnesses and the

District Court's discretion to allow presentation of evidence "by proffer or otherwise" in the context of pretrial detention hearings. 18 U.S.C. § 3142(f)(2)(B) (emphasis added).

The District Court's holding represents a sharp deviation from Supreme Court precedent, and precedent from other circuits, which establishes that the Government may only rely upon the hearsay testimony of a confidential informant where the informant's testimony is not central to the defendant's guilt or innocence, Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623 (1957). Moreover, even where the informant's testimony is not critical, the District Court must require the Government to establish strong reasons for keeping its evidentiary sources confidential and corroborating evidence of the confidential informant's claim. United States v. Acevedo-Ramos, 755 F.2d 203, 209 (1st Cir. 1985).

A. The District Court's Interpretation of 18 U.S.C. § 3142(f)(2)(B) Threatens The Constitutionality of The Bail Reform Act.

In Roviaro, supra, this Court held that an informant must be disclosed if his testimony is highly relevant to the charges against the defendant. 353 U.S. at 64-65. As in that case, this is a case where:

> The informer was the only witness in a position to amplify or contradict the testimony of the Government's witness.

Roviaro, supra, 353 U.S. at 64. In such a case, this Court has held that failure to require the disclosure of the government's witness is prejudicial error. Id.; see also, California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984)(Government may be required to disclose the identity

of an undercover informant where truth of informer's alleged testimony is central to the charges; Roviaro applies in context of Confrontation Clause and Due Process claims); Branzburg v. Hayes, 408 U.S. 665, 698, 92 S.Ct. 2626 (1972).

Refusal to apply the standard set forth in Roviaro, supra, to pretrial detention hearings threatens the continuing validity of this Court's holding in United States v. Salerno, 481 U.S. 739, 750-752, 107 S.Ct. 2095 (1987). In Salerno, supra, this Court upheld the constitutionality of pretrial detention on the basis of dangerousness because "in a full-blown adversarial hearing, the Government must convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any other person." Id. at 750. However, the District Court's interpretation of 18 U.S.C. § 342(f)(2)(B) permits the Government to avoid the rigors of the adversarial process in pretrial detention hearings by hiding weak evidence and non-credible witnesses behind double and triple layers of hearsay.

This interpretation of 18 U.S.C. § 342(f)(2)(B) is unsupported by precedent from any other circuit and contravenes the expressed intent of Congress. The right to confront witnesses and refute evidence has been enforced in pretrial detention hearings both prior and subsequent to passage of the Bail Reform Act. See, United States v. Wind, 527 F.2d 672 (6th Cir. 1975)(use of *in camera* proceedings at pretrial detention hearings violates the defendant's right to confront witnesses and refute evidence.)\[2]; United States v.

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[2] Congress' intent to retain this right is manifested by its citation to United States v. Wind, supra, and United States v. Gilbert, 425 F.2d 490 (D.C.Cir. 1969) with approval in Report of Senate Committee on Judiciary, S.Rep. No. 98-225, 98th Cong., 2nd Sess. (1984 U.S. Code Cong.

Leon, 766 F.2d 77 (2d Cir. 1985). Similarly, in United States v. Gilbert, 425 F.2d 490 (D.C.Cir. 1969), the Court held that a witness who heard an alleged threat must be produced if the Government chose to rely on his testimony.

In relying exclusively upon the observations of Detective Shanley, the District Court erroneously applied the standard for probable cause, where "the magistrate is concerned not with whether the informant lied, but with whether the affiant [police officer] is truthful in his recitation of what he was told." McCray v. Illinois, 386 U.S. 300, 313-314, 87 S.Ct. 1056 (1967). Where, as here, the issue is whether the informant lied, the "right to cross examine includes the opportunity to show that the witness is biased, or that the testimony is exaggerated or unbelievable." Pennsylvania v. Ritchie, 480 U.S. 39, 51-52, 107 S.Ct. 989, 998 (1987)(emphasis added).

In refusing to even compel the United States to disclose the informant's identity, the District Court denied Petitioner "access to information that would make possible effective cross examination of a crucial prosecution witness" in violation of the Due Process and Confrontation Clauses. Ritchie, 480 U.S. at 41; United States v. Accetturo, 783 F.2d 382 (3rd Cir. 1986)(allowing hearsay testimony as one part of evidence against defendant and where defendant knew the identity of the informant).

& Ad.News, p. 3182-3219). See, Report at 3190 n.17 and at 3204 n.61.

B. The District Court's Holding Will Impermissibly Make Pretrial Detention The Rule Rather Than The Exception.

The District Court's holding would impermissibly make pretrial detention the rule rather than the exception, for the Government could continually channel the testimony of non-credible informants through credible police officers. The Court did not make any finding that the Government established strong reasons to keep its informant confidential. Rather the Court simply held that it was not "necessary" for the Petitioner to call the informant. (Appendix, p. 9A). cf. Acevedo-Ramos, 755 F.2d at 209 (requiring Government to establish "strong reasons for keeping its evidentiary sources confidential.") Thus, the Court violated Petitioner's right to due process by failing to utilize procedures necessary to minimize the risk of an erroneous deprivation of Petitioner's liberty. See, e.g., United States v. Terrones, 712 F.Supp. 786 (S.D.Cal. 1989).

In addition, unlike the cases relied upon by the United States at the District Court and Court of Appeals, the Government here did not provide any evidence to corroborate that the threat was made. cf. Acevedo-Ramos, supra.

The observations of Detective Shanley do not corroborate that petitioner threatened the life of Detective Shanley. In United States v. Danesi, 342 F.Supp. 889 (D.Conn. 1972), the Court correctly rejected this precise claim. The Court held that "[i]t would be circular bootstrapping to credit his [the police officer's] observation because it jibes with the informant's report, and then credit his account of the informant's report because of his observations." Danesi, 342 F.Supp. at 893.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,
PETITIONER
JOSE ANTONIO PEREZ

By _____

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No. _____

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4. Indictment of Petitioner . . . . . App. 16A-22A

5. Ruling on Motion For Pretrial Detention And Detention Order dated October 30, 1996 . . . . . App. 23A-25A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

* * * * * * * * * * * * * * *

UNITED STATES OF AMERICA

No. 3:96CR186 (DJS)

v.

JOSE PEREZ, DAVID PEREZ, EVARESTO DIEPPA, ET AL.

December 10, 1996

* * * * * * * * * * * * * * *

Hartford, CT

COMPLETE TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DOMINIC J. SQUATRITO

Appearances:

For the Government: David A. Ring, Esq.

For Defendant Jose Perez: Hubert J. Santos, Esq.
For Defendant David Perez: Jeremy H. Weingast, Esq.
For Defendant Evaresto Dieppa: Margaret P. Levy, Esq.

Court Reporter:

Susan J. Lamoureux
Official Court Reporter
U.S. District Court
450 Main Street
Hartford, Connecticut 06103

Proceedings recorded by mechanical stenography, transcript produced by computer-aided-transcription.

MS. LEVY: Your Honor, I have letters essentially --

THE COURT: I'm assuming -- I'm going to take his word for it, and your word for it, that he was living with his grandmother down there.

MS. LEVY: That's correct.

THE COURT: If you want to address yourself -- is that something you want to talk about? That's a given fact.

MS. LEVY: I don't have any problem with that. As to the question of personal stability or just personal reference, if we are at that stage, I have --

THE COURT: Let me just think about this for a moment. Is there anything else regarding the question of safety? My understanding of it, if I may summarize the evidence, is that the Government has to show by clear and convincing evidence that there's -- although the nature of this crime is such because it allows for maximum incarceration for more than ten years, since it involves drugs, there's a presumption on behalf of the Government, however, once that presumption is put into question, that the Government has to show by clear and convincing evidence under the release and detention statutes, which begin at 18, Section 3141, the Government has put into evidence regarding Mr. Jose Antonio Perez that there was a

direct threat against Officer Shanley to a confidential informant while in the bathroom making a drug sale; that Mr. Topo was present in the bathroom at that time; that Jose Antonio Perez walked into the bathroom and told the confidential informant that -- something to the effect that if Shanley is a law enforcement officer, that he would either be capped or he would be gotten rid of, or threatened him with some comment that could be perceived by any reasonable person as being a threat to their personal safety, or well-being. This comment then was said to Officer Shanley, who was out in the bar at that time, waiting around for a few moments, and the confidential informant then left, and at that same time Wilfredo Perez was in the bar and David Perez was in the bar, and it's not clear, but one of those two left the bar.

So at that time in the bar we have Topo, who was known to have been involved in drug transactions prior to April 24, 1996; we have the confidential informant, who was directly involved on behalf of the law enforcement agency; we have Mr. Wilfredo Perez, who was known at the time to be involved, although not greatly, in this incident on that occasion; and we have David Perez, who was known to be involved in drug trafficking with this group of people, but not on that particular instance.

The statement of the confidential informant or the statement of Mr. Jose Antonio Perez to the confidential informant would relate to Officer Shanley. The Court is going to find that is a threatening nature of which would be such by clear and convincing evidence not to allow for the release of Mr. Jose Antonio Perez.

The Court rejects the arguments of defense counsel Santos as to the nature of the evidence that the Court could review. The Court finds that not only was there a statement that may have been considered hearsay, but that hearsay is permitted because Mr. Shanley was present in the bar, it was relayed to him immediately after having been made, and the confidential informant was such that he was able to rely upon his truth and veracity because of the long-term dealings that he had with his confidential informant on several occasions.

The Court gives full credit to the credibility of Mr. Shanley as to how these events transpired, what the confidential informant said to him. There was no reason to disbelieve the recollection and the testimony of Mr. Shanley concerning the direct threat or the apparent threat to Mr. Shanley transmitted through the confidential informant, which was corroborated because Mr. Shanley was right there in the bar.

So, there's no question here that the confidential informant's hearsay statement through some other time and

place, closeness in proximity in time to give full weight and credit to the statement of the confidential informant and the recollection or rendition of it by Officer Shanley.

As to Mr. David Perez, on the question of safety, the Government has not proved by clear and convincing evidence that the taking of photos in the context in which they were taken was such that they could be -- that they are seen as proof by clear and convincing evidence that there was a threat by Mr. David Perez against Mr. Shanley. At the time the photos were taken, there was a child involved. You do not even know that the photo was of the child and only Mr. Shanley or the two of them who were near each other. There's no reason to believe by clear and convincing evidence that the photos were taken for the purpose of having a pictorial recollection of Mr. Shanley.

It should also be noted that the incident in question of April 20 -- whether it was a direct threat April 24th, 1996, was substantially after the taking of the photo in either December of 1995 or January of 1996, of Mr. Shanley with the child, and we do not even know for a fact that Mr. Shanley was in the picture, only that the picture was taken in his direction where the child was

seated next to him. In other words, that was a pretext for anything else.

The Court cannot infer clear and convincing evidence from this episode, and -- out of fairness for everyone, so, therefore, the Government does not carry its burden regarding the fact that Mr. David Perez is a threat to the community or a threat to Officer Shanley.

The Court also finds in the case of Mr. Dieppa -- excuse me -- also with regard to Jose Antonio Perez, since there is no question of -- that he will be incarcerated, there is no question of flight.

In the case of Mr. David Perez, since the Government has not put into issue the question of fear of flight from the jurisdiction, the Court will hear from the Government and from Mr. David Perez's lawyer as to the condition or conditions that will apply to his release to guarantee his appearance at trial.

MR. RING: Your Honor, may I ask a brief question of Ms. Hermosilla?

(Off-the-record discussion.)

THE COURT: Anything else? Do you want me to hold up?

MR. RING: Your Honor, I believe the Court asked me what conditions would be appropriate.

THE COURT: I want to go through with what I'm

talking about.

MR. RING: I'm sorry, your Honor. I thought the Court was asking me for a response.

THE COURT: I'm sorry if I misled you there.

With regard to Mr. Dieppa, the Court finds that the Government has not carried the burden by clear and convincing evidence that Mr. Dieppa will be a safety problem for the community or Officer Shanley. Specifically, it is not clear whether or not Mr. -- this is not to discredit the officer's testimony. The officer's testimony taken at face value is not -- does not get clear and convincing evidence because it's not clear whether or not Mr. Dieppa saw this emblem that was transmitted between Officer Shanley and the people in Puerto Rico in terms of a charitable or collegial type of exchange between officers of different jurisdictions, and even if it's not sure whether or not Mr. Dieppa got the idea that Mr. Shanley was in Southington or elsewhere, the fact that at the time of Mr. Dieppa's arrest, all of the other individuals who had been involved in this alleged conspiracy, that is, Mr. Wilfredo Perez, Mr. Berrios, Mr. David Perez, that all of them have been arrested and/or released, the Court does not find that an asking of are you going home to Southington or are you going home, it's not clear as to how Mr. Dieppa would know it was

Southington, but it's not clear either that the statement -- an idle statement of that nature is threat per se, and dating back in time from September to the alleged -- or what is not to be found by the Court to be clear and convincing evidence of a threat by Jose Antonio Perez April 24, 1996 to when the CI told Mr. Shanley that there was a threat, the Court does not find in terms of proximity at the time and space that could be readily perceived as a continuing threat as indicated either by Mr. Shanley or by Mr. Ring, if Mr. Ring did do so. So, therefore, the Court finds that the Government did not carry its burden, even though the Court does not discredit Officer Shanley's testimony.

So, therefore, the only question with regard to Mr. Dieppa would be whether or not there's a risk of flight. The Court finds as a practical matter that based upon the proof of evidence which was not contradicted by the Government that Mr. Dieppa, who is a citizen of the United States, although not the territorial -- not residing in the territorial United States at the time of his arrest, the fact that he went and lived with his grandmother, the Court would infer that he did not intend to secret himself from any arrest. The Court could also infer that since everybody else had been arrested in this case, that -- and since these people that -- because some of them are related, that Mr. Dieppa may well have known

that the heat was on. so from a very -- from that point of view, the Court does not find that he's a risk of flight. However, there are certain conditions that will have to prevail to guarantee his appearance in court.

So now the question before us -- Mr. Jose Antonio will stay incarcerated until time of trial, until further order of this Court.

Let's begin now with Mr. David Perez.

MR. SANTOS: Your Honor, for the record, it would be our intention to call the informant, but as I understand the ruling --

THE COURT: I'm ruling it's not necessary. You do not have the right to do so at this hearing, based on the evidence that was presented to the Court.

MR. SANTOS: Thank you.

THE COURT: Let's go with Mr. -- let's go with Mr. David Perez.

Okay. Excuse me. Do you need the interpreter? Do we need the interpreter further?

MS. LEVY: Yes, your Honor, my client --

THE COURT: Let's go forward with Mr. Dieppa first, because I think -- Mr. Castro, you have to go someplace?

MS. LEVY: I'm sorry, your Honor. I'm going to

UNITED STATES DISTRICT COURT

----------DISTRICT OF Connecticut

UNITED STATES OF AMERICA

V. **ORDER OF DETENTION PENDING TRIAL**

JOSE ANTONIO PEREZ Case Number: 3:96CR186 (DJS)

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

_x_ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

- _x_ a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- _x_ an offense for which the maximum sentence is life imprisonment or death.
- _x_ an offense for which the maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. 802, et seq.
- ___ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.

__ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.

__ (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).

_x_ (4) Finding Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find

that the defendant has not rebutted this presumption.

Alternate Findings (A)

__ (1) There is a probable cause to believe that the defendant has committed an offense.

__ for which a maximum term of imprisonment of ten years or more is prescribed in _____.

__ under 18 U.S.C. §924(c).

__ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

__ (1) There is a serious risk that the defendant will not appear.

_x_ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

During a drug transaction at the Hour Glass Cafe on April 24, 1996, the defendant threatened the safety of an undercover law enforcement officer, Det. Shanley, by stating to a CI that Det. Shanley, who also was in the bar at the time, would be killed or seriously injured if the defendant confirmed his suspicions that Det. Shanley was, in fact, a law enforcement officer.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: 12/19/96 /s/Dominic J. Squatrito
Signature of Judicial Officer

U.S.D.J.
Name and Title of Judicial Officer

18 U.S.C. § 3142 - "Release or detention of a defendant pending trial" - provides in relevant part the following:

(a) In general - Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be -

> **(1)** released on his personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
> **(2)** released on a condition or combination of conditions under subsection (c) of this section;
> **(3)** temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
> **(4)** detained under subsection (e) of this section.

- - -

(e) Detention - If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

- - -

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1909 et seq.) or an offense under section 924(c), 956(a), or 2332b of title 18 of the United States Code.

(f) Detention Hearing - The judicial officer shall hold a hearing to determine whether any condition or combination

of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community -

(1) upon motion of the attorney for the Government, that involves -

(A) a crime of violence;
(B) an offense for which the maximum sentence is life imprisonment or death;
(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); or
(D) any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed; or a combination of such offenses; or

(2) Upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves -

(A) a serious risk that the person will flee;
(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror.

At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing.

UNITED STATES OF AMERICA

DISTRICT OF CONNECTICUT

Grand Jury H-95-1

U.S.A.	: Criminal No.
	: 3:96CR186 (DJS)
v.	:
	:
WILFREDO PEREZ,	: 21 U.S.C. § 846
	: (Conspiracy to Possess with
	: Intent to Distribute and
	: Distribution of Cocaine);
JOSE ANTONIO PEREZ,	:
a/k/a "TONY,"	: 21 U.S.C. § 841(a)(1)
	: (Distribution of Cocaine);
DAVID PEREZ,	:
	: 21 U.S.C. § 848
	: (Continuing Criminal
	: Enterprise);
OLIGABETH BERRIOS	:
a/k/a "OLLIE,"	: 18 U.S.C. § 922(g)–
	: (Felon in Possession of a
	: Firearm)
EVARESTO DIEPPA,	:
a/k/a "CHOAKO,"	: 18 U.S.C. § 922(k)
	: (Possession of Firearm with
	: Obliterated Serial Number)
ANDRES LOPEZ, and	:
	: 18 U.S.C. § 2–
	: (Aiding and Abetting)
LINDA TRIGILIO.	:
	: 21 U.S.C. § 853
	: (Criminal Forfeiture)

INDICTMENT

The Grand Jury charges:

COUNT ONE

From in or about September, 1993 and continuing up to and including June 4, 1996, the exact dates being unknown to the Grand Jury, in the District of Connecticut and elsewhere, WILFREDO PEREZ; JOSE ANTONIO PEREZ, a/k/a "TONY"; DAVID PEREZ, OLIGABETH BERRIOS, a/k/a "OLLIE", EVARESTO DIEPPA, a/k/a "CHOAKO"; ANDRES LOPEZ; and LINDA TRIGILIO, the defendants herein, and others known and unknown to the Grand Jury, did knowingly and intentionally combine, conspire, confederate and agree together and with one another to possess with intent to distribute and to distribute five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, contrary to the provisions of Title 21, United States Code, Section 841(a)(1).

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

From on or about September, 1993, and continuing thereafter through and until June 4, 1996, the exact dates being unknown to the Grand Jury, in the District of Connecticut and elsewhere, WILFREDO PEREZ, JOSE ANTONIO PEREZ a/k/a "TONY," and DAVID PEREZ, the defendants herein, did willfully, knowingly and intentionally engage in a Continuing Criminal Enterprise, in that each did violate and cause other to violate Title 21, United States Code, Sections 846 and 841(a)(1), and Title 18, United States Code, Section 2, which violations were part of a continuing series of violation of said statutes, and which were undertaken by the defendants, in concert with five or more other persons, with respect to whom the defendants occupied

the position of organizer, a supervisory position and any other position of management, and from which continuing series of violations the defendant obtained substantial income and resources.

In violation of Title 21, United States Code, Section 848.

COUNT THREE

On or about June 19, 1995, in the District of Connecticut, WILFREDO PEREZ, the defendant herein, did knowingly and intentionally possess with intent to distribute and distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) & (b)(1)(B).

COUNT FOUR

On or about June 4, 1996, in the District of Connecticut, OLIGABETH BERRIOS, a/k/a "OLLIE," the defendant herein, did knowingly and intentionally possess with intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) & (b)(1)(B).

COUNT FIVE

On or about July 11, 1995, in the District of Connecticut, LINDA TRIGILIO, the defendant herein, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT SIX

On or about September 8, 1995, in the District of Connecticut, JOSE ANTONIO PEREZ, a/k/a "TONY" and EVARESTO DIEPPA, a/k/a "CHOAKO," the defendants herein, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT SEVEN

On or about November 22, 1995, in the District of Connecticut, DAVID PEREZ and ANDRES LOPEZ, the Defendants herein, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT EIGHT

On or about February 23, 1996, in the District of Connecticut, EVARESTO DIEPPA, a/k/a "CHOAKO," the defendant herein, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT NINE

On or about March 15, 1996, in the District of Connecticut, ANDRE LOPEZ, the defendant herein, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT TEN

On or about June 1, 1996, in the District of Connecticut, DAVID PEREZ, the defendant herein, having been convicted of Larceny in the Second Degree, in violation of Connecticut General Statutes, Section 53a-123, on October 22, 1991, which is a crime punishable by a term of imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce a firearm, that is, one Davis .32 caliber pistol, serial number P133337, and one Jennings .22 caliber pistol, serial number 403173, both of which had been shipped in interstate and foreign commerce.

In violation of Title 18, United States Code, Section 922(g).

COUNT ELEVEN

On or about June 4, 1996, in the District of Connecticut, OLIGABETH BERRIOS, a/k/a "OLLIE," the defendant herein, did knowingly possess a firearm, that is: two semi-automatic 7.62 caliber rifles, Model MAK-90, and serial numbers 94145969 and 94148929, which had the manufacturer's serial numbers removed, obliterated and altered and which had been shipped and transported in interstate and foreign commerce.

In violation of Title 18, United States Code, Section 922(k).

COUNT TWELVE

1. As a result of the foregoing offenses, WILFREDO PEREZ, JOSE ANTONIO PEREZ a/k/a "TONY" AND "DAVID PEREZ, the defendants named in Counts One, Two, Three, Six and Seven, hereof, shall jointly and severally forfeit to the United States any and all property constituting, or derived from, any proceeds the defendants obtained directly or indirectly from, any proceeds the defendants obtained directly or indirectly as a result of the violations alleged in Counts One, Two, Three, Six and Seven, of this Indictment, any and all property unused or intended to be used in any manner or part to commit and to facilitate the commission of the violations alleged in Counts One, Two, Three, Six and Seven, of this Indictment, and any of said defendants' interest in, claims against, and property and contractual rights of any kind which was used or intended to be used in any manner or part to commit and to facilitate the commission of the violations alleged in Counts One, Two, Three, Six and Seven, of this Indictment, and which afforded a source of influence over the Continuing Criminal Enterprise charged in Count Two, including, but not limited to, the following:

a) Approximately $1,000,000.00 in United States currency, in that such sum in aggregate was received in exchange for the distribution of controlled substances or is traceable thereto;

b) Perez Automotive, Inc., 115 Newfield Avenue, Hartford, Connecticut.

2. If any of the above-described forfeitable property, as a result of any act or omission of the said defendant named in Counts One, Two, Three, Six and Seven hereof --

a. cannot be located upon the exercise of due diligence;
b. has been transferred or sold to, or disposed with a third person;
c. has been place beyond the jurisdiction of the United States District Court for the District of Connecticut;
d. has been substantially diminished in value; or
e. has been commingled with other property which cannot be subdivided without difficulty.

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the said defendant, up to the value of the above-described forfeitable property.

All in violation of Title 21, United States Code, Sections 841, 846, 848 and 853.

A TRUE BILL

/S/_____
FOREPERSON

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES

-v- CRIMINAL NO. 3:96CR186 (DJS/TPS)

JOSE ANTONIO PEREZ
and DAVID PEREZ

RULING ON MOTION FOR PRETRIAL
DETENTION AND DETENTION ORDER

The defendants are charged in a multi-count indictment with various violations of federal narcotics laws, including participating in a continuing criminal enterprise and conspiracy to distribute large quantities of cocaine in violation of Title 321 U.S.C. §§ 848, 846 and 841. In addition, the defendant David Perez has been charged with the unlawful possession of firearms by a convicted felon in violation of 18 U.S.C. § 922(g). The government has moved for the defendants' detention on risk of flight and dangerousness grounds. A detention hearing was held on October 29 and 30, 1996. Based on the evidence adduced at the hearing, the government's motion for detention is granted.

Nature and Circumstances of the Offense

The government alleges that the defendants are principals in a large scale cocaine distribution organization. Drug sales frequently occurred at the Hourglass Cafe under the supervision of one or both of the defendants. Many of these drug transactions were witnessed by at least one undercover police officer, Detective Shanley.

Weight of the Evidence

To the extent that it depends on hand to hand sales to undercover officers, the government's case appears quite strong. To the extent sale were made to and incriminating conversations were conducted with cooperating individuals other than undercover police officer, the case is less strong, but nevertheless appears good.

History and Characteristics of the Defendant

David Perez has several prior felony convictions, including convictions for robbery, failure to appear as required by the terms of his probation, larceny, and assault. He is charged with the unlawful possession of two handguns. He has failed to comply with restitution requirements imposed by the state court.

Jose Antonio Perez has several prior felony convictions. These include Assault 3, failure to appear, possession of narcotics, burglary 3, burglary 3, and larceny 3. According to the government's proffer and the hearsay testimony of Detective Blair, Jose Antonio Perez told the CI that he (Perez) would kill Shanley in the event that he (Shanely) turned out to be a police officer. The CI is reportedly in fear for his life. Detective Shanley also testified that he fears for his life.

Risks Posed by Release

Given the apparent strength of the government's case, the conviction of each of the defendants appears likely. In light of the extremely high minimum mandatory sentences which the defendants face, and their lengthy criminal records, it is likely that each will face extraordinarily long periods of incarceration. Given the defendants' unimpressive family times, lack of significant employment, they have a strong incentive to flee. They have failed to rebut the statutory presumption that no terms and conditions, of combination thereof, would reasonably assure their appearance to answer the charges against them.

Based on the credible evidence which has been adduced, the court also find that the defendant present a

serious risk to the lives of the CI and the undercover police officer, Detective Shanley. In this regard, the court notes the treats that were made by Jose Antonio Perez at the Hourglass Cafe, the handguns seized from David Perez, the 1000 rounds of ammunition seized from Jose Antonio Perez, and the firearms allegedly seized from other codefendants alleged to be members of the Perez organization.

Existence of Conditions

The defendants have failed to rebut the statutory presumption that there are no terms and conditions or combination thereof which would reasonably assure that the defendants would remain to answer the charged against them, or which would reasonably assure the safety of the CI, Detective Shanley, or society.

THEREFORE, the defendant is committed to the custody of the Attorney General or her authorized representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting sentencing or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a judge of the United States or on request of an attorney for the government, his person shall be delivered to the United States Marshal or his deputies for the purpose of appearing in connection with a court proceeding.

IT IS SO ORDERED at Hartford, Connecticut, this 30th day of October, 1996.

/s/_____

THOMAS P. SMITH
UNITED STATES MAGISTRATE JUDGE

FILED

961266 FEB 7 1997

OFFICE OF THE CLERK

No.

In The

Supreme Court Of The United States

October Term, 1996

JOSE ANTONIO PEREZ,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Supplement to Appendix
Petition for Certiorari

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United States Court of Appeals
FOR THE SECOND CIRCUIT

United States of America District Court
(seal dated 12/26/96) Docket No: 3:96CR186

NOTICE OF MOTION

Jose Antonio Perez for Appeal

MOTION BY:	OPPOSING COUNSEL:
Hubert J. Santos	David Ring
Santos & Seeley, P.C.	Assistant U.S. Attorney
51 Russ Street	450 Main Street, Room 328
Hartford, CT 06106	Hartford, CT 06103
860-249-6548	860-240-3270

Has consent of opposing counsel:
A. been sought? ☒Yes ☐No
B. been obtained? ☒Yes ☐No
Has service been effected? ☒Yes ☐No
Is oral argument desired? ☒Yes ☐No
Has argument date of appeal been set:
A. by scheduling order? ☐Yes ☒No
B. by firm date of argument notice? ☐Yes ☒No
Judge or agency whose order is being appealed:
District Court Judge Dominic J. Squatrito
Brief statement of the relief requested:
The Defendant requests the District Court of Appeals to review Judge Squatrito's Order of Detention.
Appearing for: Appellant or Petioner: ☐Plaintiff ☐Defendant
Appellee or Respondent: ☐Plaintiff ☐Defendant
By: /s/Hubert J. Santos Appearing for: Jose Antonio Perez
Hubert J. Santos Date: 12/24/96

----------**ORDER**----------

BEFORE: WALKER, PARKER AND HEANEY, CJJ.
IT IS HEREBY ORDERED that the detention order of the district court be and it hereby is affirmed.
(Seal dated 1/28/97)**FOR THE COURT**
GEORGE LANGE III, Clerk
By:/s/Arthur Heller
January 28, 1997 **Arthur Heller/Administrative Attorney**